

FIRST DRAFT - 3/23/73

PUBLIC HEALTH REGULATIONS
DEPARTMENT OF HEALTH, STATE OF HAWAII

CHAPTER 37-A

WATER QUALITY STANDARDS

Under and by virtue of the provisions of Sections 46-13 and 46-16, Revised Laws of Hawaii 1955. Chapter 342, Hawaii Revised Statutes, the Federal Water Pollution Control Act of 1972 (PL 92-500), ^{Amendments} and all other applicable laws, Chapter 37-A of the Public Health Regulations, Department of Health, State of Hawaii, is hereby amended to read as follows:

Section 1. PURPOSE AND SCOPE

Pursuant to the authority granted by Section 46-16, Revised Laws of Hawaii 1955. Chapter 342, Part III, Section 32 Hawaii Revised Statutes, the Director of Health of the State of Hawaii appointed a Master to divide the waters of the State into areas and to recommend to the Director standards of water quality for such water areas. Except as modified in this Chapter, the standards recommended by the Master are hereby adopted. The standards adopted, hereinafter set forth, shall be the standards of water quality for the purposes of Chapter 37, Public Health Regulations, Department of Health, State of Hawaii, and shall be enforced and administered as provided therein.

Section 2. DEFINITIONS

- A. "Near shore waters" means all coastal waters lying within a defined reef area, all waters of a depth less than ten fathoms, or waters up to a distance of 1000 feet off-shore if there is no defined reef area and if the depth is greater than ten fathoms.
- B. "Off-shore waters" means all coastal waters within the jurisdiction of the State of Hawaii beyond the limits defined for "near shore waters."
- C. "Coastal waters" includes "near shore waters," "off-shore waters" and those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide.

D. "Fresh Water"

Section 3. CLASSIFICATION OF WATER USES

A. Classification of Coastal Water Uses

Coastal waters are classified in accordance with the uses to be protected in each class as follows:

1. Class AA waters

The uses to be protected in this class of waters are oceanographic research, ^{the support} propagation of shellfish and other desirable marine life, ? conservation of coral reefs and wilderness areas, compatible ? recreational uses and aesthetic enjoyment.

It is the objective of this class of waters that they remain in as nearly their natural, pristine state as possible with an absolute minimum of pollution from any source. To the extent possible, the wilderness character of such areas shall be protected. No zones of mixing variances will be permitted in these waters.

The classification of any water area as Class AA shall not preclude other uses of such waters compatible with these objectives and in conformance with the standards applicable to them.

2. Class A waters

The uses to be protected in this class of waters are recreational, including fishing, swimming, bathing, and, ~~and~~ other water-contact sports and, aesthetic enjoyment and the support and propagation of desirable species of aquatic life.

It is the objective for this class of waters that their use for recreational purposes and aesthetic enjoyment not be limited in any way. Such waters shall be kept clean of any trash, solid materials or oils and shall not act as receiving waters for any effluent which has not received the best practicable treatment or control compatible with the standards established for this class.

3. Class B waters

The uses to be protected in this class of waters are small boat harbors, commercial [.] and industrial shipping, ~~and industrial bait fishing, compatible recreational uses,~~ the support and propagation of desirable species of aquatic life and aesthetic enjoyment.

It is the objective for this class of waters that discharges of any pollutant be controlled to the maximum degree possible and that sewage and industrial effluents receive the best practicable treatment or control compatible ^{with} [for] the standards established for this class.

The Class B designation shall apply only to a limited area next to boat docking facilities in bays and harbors. The rest of the water area in such bay or harbor shall be Class A unless given some other specific designation in Section 5.

B. Classification of Fresh Water Uses

Fresh waters are classified in accordance with the uses to be protected as follows:

1. Class 1 waters

The uses to be protected in this class of waters are drinking water supply and food processing.

2. Class 2 waters

The uses to be protected in this class of waters are bathing, swimming, [recreation, growth and propagation of fish and other] the support and propagation of desirable species of aquatic life, compatible recreational uses and agricultural and industrial water supply.

* It is the objective of this class of waters that they remain as nearly the natural state as possible with an absolute minimum of pollution from any source.

fresh water
may also be
coastal waters

Section 4. ZONES OF MIXING

**Zones of mixing for the assimilation of municipal, agricultural and industrial discharges which have received the best practicable treatment or control are recognized as necessary.

It is the objective of this limited zone to provide for a current realistic means of control over such discharges and at the same time achieve the highest attainable level of water quality.]

Section 5 4. CLASSIFICATION AND ESTABLISHMENT OF WATER AREAS

The following classification of water uses shall apply to the following areas.

A. Coastal Water Areas

1. Oahu

[**](a) Class AA waters

Waimanalo Bay from Makapuu Point to the southerly boundary of Kaiona Beach Park and including the waters surrounding Manana and Kaohikaipu Islands.

Kaneohe Bay.

Kahana Bay.

Waialua Bay, from Puaena Point to Kaiaka Point.

The near shore waters along Kaena Point for a distance of $3\frac{1}{2}$ miles towards Mokuleia and $3\frac{1}{2}$ miles towards Makua.

That portion of West Loch, Pearl Harbor, lying north of a tangent drawn from Nichols Point to Loch Point.

Hanauma Bay.

[**](b) Class A waters

That portion of Waimanalo Bay not designated Class AA.

Kailua Bay, from Wailea Point to Mokapu Point.

The near shore waters between Mokapu Point and Pyramid Rock.

The near shore waters between Makalii Point and Laie Point.

Laie Bay.

Salt Lake.

All coastal waters not included in any other class.

(c) Class B waters

Kaneohe Bay small boat harbor adjacent to Kaneohe Yacht Club.
Kaneohe Marine Corps Air Station small boat harbor and pier area.
Kewalo Basin.
Ala Wai Boat Harbor.
Pokai Bay small boat harbor.
Haleiwa small boat harbor.
Keehi Lagoon marina areas.
Heeia-Kea small boat harbor.
Campbell Estate Industrial Harbor.
Pearl Harbor - Middle Loch and East Loch and that portion of West Loch not classed as AA waters.
Honolulu Harbor.
Hickam Harbor.
Kuapa Pond Marina areas.

2. Kauai

(a) Class AA waters

The near shore waters between Hikinoe Valley and Puu Poa Point, including Wainiha Bay and Hanalei Bay.
The near shore waters between Ka Lae Kiki Point to Makahuena Point.

(b) Class A waters

All coastal waters of the island of Niihau.
All coastal waters of the island of Kauai not included in any other class.

(c) Class B waters

Wailua River small boat harbor.
Kukuiula /Bay./ small boat harbor.
Hanapepe Bay small boat harbor.
Kikiaola Harbor.
Nawiliwili /Bay./ Harbor.
Port Allen, /Hanapepe Bay./ Harbor.

3. Molokai

(a) Class AA waters

The near shore waters between the westerly boundary of Haleolono Harbor and Laau Point.
The near shore waters between Laau Point and Ilio Point and from Ilio Point to Lamaola Head.

[*]The near shore waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor, except the waters of and from Kalaeloa Harbor, westerly, to and including the near shore waters adjoining the Ahupuaa of Puaahala and Kalokoiki Fish Pond.

(b) Class A waters

Halawa Bay.

The near shore waters from the westerly boundary of Kaunakakai Harbor to the easterly boundary of Haleolono Harbor.
The coastal waters not included in any other class.

(c) Class B waters

Kaunakakai Harbor.
Haleolono Harbor.

[*]The waters of and from Kalaeloa Harbor, westerly, to and including the near shore waters adjoining the Ahupuaa of Puaahala and Kalokoiki Fish Pond.

4. Lanai

(a) Class AA waters

/The near shore waters from the westerly boundary of Hulopoe Bay to Kaiolohia Bay./
All coastal waters not included in any other class.
/The near shore waters from Kamaika Point to the easterly boundary of Manele Bay./

(b) Class A waters

/All coastal waters not included in any other class./
Manale Bay.

(c) Class B waters

Manele /Bay./ Harbor.
Kaumalapau Harbor.

5. Maui

(a) Class AA waters

The near shore waters between Nakalele Point and Waihee Point.
The near shore waters between Huelo Point and /Nanualele Point./
Puu Olai.

(b) Class A waters

All coastal waters not included in any other class.

(c) Class B waters

Maalaea small boat harbor.
Lahaina small boat harbor.
Kahului /Bay./ Harbor.
Hana Harbor.

[**]6. Hawaii

(a) Class AA waters

The near shore waters from /Ka Lae/ Leleiwi Point to Waiulaula Point.

(b) Class A waters

The near shore waters from the northern boundary of Kawaihae Harbor to the southern boundary of Mahukona Harbor.

The near shore waters from Kauilii Point to the westerly boundary of Hilo Harbor.

The near shore waters from the easterly boundary of Hilo Harbor to Ka Lae, excepting Honuapo Bay.

All coastal waters not included in any other class.

(c) Class B waters

Honuapo Bay / . / small boat mooring areas.
Kealakekua Bay / . / small boat mooring areas.
Keauhou Bay / . / small boat mooring areas.
Kailua Bay / . / small boat mooring areas.
Honokahau / Bay. / small boat harbor.
Mahukona Harbor.
Hilo Harbor.
Kawaihae Harbor.

7. All other islands of the State

(a) Class A waters

All coastal waters.

B. Fresh Water Areas

1. Class 1 waters

All sources of fresh surface water on all islands whether publicly or privately owned, used for domestic, ^{and} culinary or food processing purposes.

2. Class 2 waters

All fresh water streams, canals, ponds, lakes, reservoirs and rivers on all islands ^{whether publicly or privately owned} not included in Class 1.

Section [6.] 5. WATER QUALITY STANDARDS

A. Basic Standards Applicable to All Water Areas

All waters shall be free of substances attributable to discharges or wastes as follows:

1. Materials that will settle to form objectionable deposits;
2. Floating debris, oil, scum and other matter;
3. Substances producing objectionable color, odor, taste or turbidity;
4. Materials, including radionuclides, in concentrations or combinations which are toxic or which produce undesirable physiological responses in human, fish and other animal life and plants; and
5. Substances and conditions or combinations thereof in concentrations which produce undesirable aquatic life.

All waters shall also be free from soil particles resulting from erosion on land involved in earthwork, such as the construction of public works, highway, subdivisions, recreational, commercial, or industrial developments, or the cultivation and management of agricultural lands. This standard shall be deemed met if it can be shown that the land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the Director, and that a comprehensive conservation program is being actively pursued, or that the discharge has received the best practicable treatment or control.

B. Specific Standards Applicable to Particular Water Areas

1. Microbiological Requirements

The median coliform bacteria shall not exceed 70 per 100 ml [,] during any 30-day period in which 10 or more samples are collected, nor shall samples exceed 230 per 100 ml at any time.

Applicable to:
~~the~~ Class AA

Applicable to:

Classes A,
1 and 2

The median coliform bacteria shall not exceed 1000 per 100 ml, nor shall more than 10% of the samples exceed 2,400 per 100 ml per 100 ml during any 30-day period in which 10 or more samples are collected. Fecal coliform content shall not exceed an arithmetic average of 200 per 100 ml during any 30-day period nor shall more than 10% of the samples exceed 400 per 100 ml in the same time period provided that a minimum of 10 samples are collected during this 30-day period. For such portion of Class 1 waters from which water is withdrawn for distribution for drinking water or food processing following simple chlorination, the fecal coliform content shall not exceed an arithmetic average of 20 per 100 ml during any calendar month in which 5 or more samples are collected.

Fecal coliform content shall not exceed an arithmetic average of 400 per 100 ml during any 30-day period nor shall more than 10% of the samples exceed 1000 per 100 ml in the same time period provided that a minimum of 10 samples are collected during this period.

2. pH -- Units Applicable to:
- Not more than $\frac{1}{2}$ unit difference from natural conditions but not lower than 8.0 nor higher than 8.5 from other than natural causes. (Not lower than 7.0 for fresh tidal waters.) Class AA
- Not more than $\frac{1}{2}$ unit difference from natural conditions but not lower than 7.0 nor higher than 8.5 from other than natural causes. Classes A,B
- Not less than 6.5 nor higher than 8.5 Class 2
3. Nutrient Materials Applicable to:
- Total phosphorus, not greater than 0.020 mg/l. Class AA
- Total phosphorus, not greater than 0.025 mg/l. Class A
- Total phosphorus, not greater than 0.030 mg/l. Class B
- Total nitrogen, not greater than 0.10 mg/l. Class AA
- Total nitrogen, not greater than 0.15 mg/l. Class A
- Total nitrogen, not greater than 0.20 mg/l. Class B
4. Dissolved Oxygen (except from natural causes) Applicable to:
- Not less than 6.0 mg/l. Class AA
- Not less than 5.0 mg/l. Classes A,2
- Not less than 4.5 mg/l. Class B
5. Total Dissolved Solids, Salinity and Currents Applicable to:
- No changes in channels, in basin geometry of the area, or in freshwater influx shall be made which would cause permanent changes in isohaline patterns of more than $\pm 10\%$ of naturally occurring variation or which would otherwise affect biological and sedimentological situation. Total dissolved solids shall not be below 28,000 mg/l from other than natural causes. Class AA
- [**]6. Temperature Applicable to:
- Temperature of receiving waters shall not change more than 1.5°F from natural conditions. Classes AA, A, B and 2
7. Turbidity Applicable to:
- Secchi disc or secchi disc equivalent as "extinction coefficient" determinations shall not be altered from natural conditions more than 5% for Class AA waters, 10% for Class A waters or 20% for Class B waters. Classes AA, A, B

8. Radionuclides

Applicable to:

The concentration of radioactivity in water shall not exceed 1/30th of the MPC_w values given for continuous occupational exposure in National Bureau of Standards Handbook No. 69. No radionuclide or mixture of radionuclides shall be present at concentrations greater than those specified by the U. S. Public Health Services, Publication No. 956, as revised in 1962, as acceptable for drinking water.

Classes AA, A, B, 1 and 2

The concentration of radioactive materials present in fresh, estuarine, and marine waters shall be less than those that would require restrictions on the use or organisms harvested from the area in order to meet the Radiation Protection Guides recommended by the Federal Radiation Council.

Classes AA, A, B and 2

9. Hazardous material

<u>Organochlorine Pesticides</u>	<u>Maximum Concentration Allowable (mg/l in all waters)</u>
<u>Aldrin</u>	<u>0.01</u>
<u>DDT</u>	<u>0.003</u>
<u>TDE</u>	<u>0.007</u>
<u>Dreldrin</u>	<u>0.005</u>
<u>Chlordane</u>	<u>0.04</u>
<u>Endosulfan</u>	<u>0.003</u>
<u>Endrin</u>	<u>0.003</u>
<u>Heptachlor</u>	<u>0.01</u>
<u>Lindane</u>	<u>0.02</u>
<u>Methoxychlor</u>	<u>0.01</u>
<u>Toxaphene</u>	<u>0.01</u>
<u>Organophosphate Insecticides</u>	
<u>Axinphosmethyl</u>	<u>0.001</u>
<u>Ciodrin</u>	<u>0.10</u>
<u>Coumaphos</u>	<u>0.001</u>
<u>Diazinon</u>	<u>0.002</u>
<u>Dichlorovos</u>	<u>0.001</u>
<u>Dioxathion</u>	<u>0.08</u>
<u>Disulfonton</u>	<u>0.05</u>
<u>Durshan</u>	<u>0.001</u>
<u>Ethion</u>	<u>0.02</u>
<u>EPN</u>	<u>0.06</u>
<u>Fenthion</u>	<u>0.05</u>

<u>Malathion</u>	<u>0.008</u>
<u>Mevinphos</u>	<u>0.002</u>
<u>Naled</u>	<u>0.08</u>
<u>Oxydemeton Methyl</u>	<u>0.03</u>
<u>Phosphamidon</u>	<u>0.03</u>
<u>Parathion</u>	<u>0.001</u>
<u>TEPP</u>	<u>0.03</u>
<u>Trichlorophon</u>	<u>0.002</u>
<u>Residual Chlorine</u>	<u>0.002</u>

These water quality criteria are based upon the best currently available data. It is possible that studies planned to be made in connection with the implementation program may prove them to be either inadequate or unattainable. For this reason, they will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with the Hawaii Administrative Procedure Act and the Rules of Practice and Procedure of the Department of Health.

Section 7. ESTABLISHMENT OF ZONES OF MIXING

**Upon the application of any person requesting that a portion of the waters of the State be zoned for the assimilation of agricultural, municipal and industrial discharges, if the Director shall determine that such use will not violate the basic standards applicable to all waters, that such use will not unreasonably interfere with any actual or probable use of the water areas for which it is classified and that the discharges receive the best practicable treatment or control he shall then designate such portion as a zone of mixing.

**The boundaries of each zone of mixing shall be fixed by the Director, taking into account protected uses of the body of water, existing natural conditions of the receiving water (i.e., depth, currents, location, etc.), character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve a maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water. The character and the source of effluent permitted to be discharged into the zone of mixing shall be stated by the Director in the designation of the zone.

Each designation of a zone of mixing shall set forth the conditions under which it is issued. The conditions may include, but shall not be limited to, a requirement that the designee shall do effluent and receiving water sampling and shall report ~~the~~ results of such sampling to the Director or that the designee shall undertake a program of research to develop practicable alternatives to the methods of treatment or control in use by the designee.

The application shall be made on forms furnished by the Director and shall contain the information required therein.

The establishment of a zone of mixing and the boundaries thereof shall be made only after hearing held by the Director on the island where the area is situated in accordance with the Hawaii Administrative Procedure Act and the Rules of Practice and Procedure of the Department of Health.

Section 8. TERMINATION OF ZONES OF MIXING

**The Director may designate a water area as a zone of mixing for any period not exceeding ten years. Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. A water area may be redesignated as a zone of mixing for additional periods not exceeding ten years, upon application.

**The Director, on his own motion, or upon the application of any person, shall terminate the designation of the water area as a zone of mixing, if after a hearing, he shall determine that the water area does not meet the basic standards applicable to all water areas or that the use of the water area as a zone of mixing will unreasonably interfere with any actual or probable use of the water area or that the discharge into the zone of mixing does not receive the best practicable treatment or control. Such termination shall be made only after a hearing held by the Director on the island where the area is situated in accordance with the Hawaii Administrative Procedure Act and the Rules of Practice and Procedure of the Department of Health. Upon such termination, the standards of water quality applicable thereto shall be those established for the water as otherwise classified.]

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Section [9] EFFECTIVE DATE

This Chapter shall become effective thirty days after filing with the Lieutenant Governor.

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Section [10] SEVERABILITY

If any provision of this Chapter, or its application to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Chapter, shall not be affected thereby.

FIRST DRAFT -- 3/19/72

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PUBLIC HEALTH REGULATIONS

DEPARTMENT OF HEALTH, STATE OF HAWAII

AMENDMENTS TO
CHAPTER 37

WATER POLLUTION CONTROL

Under and by virtue of the provisions of Chapter 342, HRS, and The Federal Water Pollution Control Act Amendments, 1972 PL 92-500, and all other applicable laws, Chapter 37 of the Public Health Regulations, Department of Health, State of Hawaii, relating to Water Pollution Control, is hereby amended to read as follows:

Section 1. DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Chapter:

(a) "Water pollution" means

- (1) Such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the State, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the State,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental or injurious to public health, safety or welfare, including harm, detriment or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, research and scientific uses of such waters.

- (b) "Wastes" means waste materials of any kind, whether treated or not, and whether animal, mineral or vegetable, and whether liquid, gaseous, radioactive or solid, including sewage and agricultural and industrial and thermal wastes, which cause any waters of the State to be reduced

in quality below the standards applicable to the area as set out in Chapter 37-A of the Public Health Regulations, Department of Health, State of Hawaii.

- (c) "Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers, or outlets, pumping, power and other equipment and their appurtenances.
- (d) "Waters of the State" "State waters" means all
- (1) rivers, streams, canals,
 - (2) ponds, lakes, reservoirs,
 - (3) bays, harbors, channels,
 - (4) lagoons, and
 - (5) coastal and shore waters, and
 - (6) groundwaters, whether private or public, natural or artificial,
- which are situated within or bordering upon the State.
- (e) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, foundation or other institution or entity, or governmental agency.
- (f) "Director" means the Director of Health or his duly authorized agent.
- (g) "Master" means any person or persons appointed by the Director of Health to conduct investigations, to hold hearings, to report or make recommendations to the Director on matters of water pollution, the disposal of wastes and standards of water quality.
- (h) "Variance" means authorization to discharge waste when, after public hearing the director finds that the continuance of the function or operation causing the waste discharge to be in the public interest, the value of the continuance to outweigh the harm caused by the waste discharge, and which does not require an immediate schedule of abatement.

It is suggested that the proposed amendments to Chapter 37, Public Health Regulations on Water Pollution Control include the following additions or amendments to comply with the regulations of the Environmental Protection Agency and the Federal Water Pollution Control Act Amendments of 1972, PL 92-500. Citations of authority are provided for your convenience.

1. Section 1. DEFINITIONS

* * *

(i) "Act" means the Federal Water Pollution Control Act Amendments of 1972, PL 92-500.

(j) "Administrator" means the Administrator of the Environmental Protection Agency.

Section 2. STANDARDS OF WATER QUALITY

/The Director may appoint a Master who shall divide the waters of the State into areas and who, after investigations and hearings conducted in accordance with the Rules of Practice and Procedure of the Department of Health, State of Hawaii, shall recommend standards of water quality applicable to such water areas. The standards of quality recommended by the Master shall be such as to protect the present and prospective best use of each water area. Consideration shall be given by the Master to the standards and requirements of other government agencies having legal responsibilities for water quality control./

/* It is the public policy of this State to conserve the waters of the State, and to protect, maintain and improve the quality thereof for drinking water supply and food processing, for the growth, support and propagation of shellfish, fish and other desirable species of marine and aquatic life, for oceanographic research, for the conservation of coral reefs and wilderness areas, and for domestic, agricultural, industrial, recreational and other legitimate uses; and to provide that no waste be discharged into any waters of this State without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; and to provide for the prevention, abatement and control of new and existing water pollution; and to cooperate with the federal government in carrying out these objectives.

/* Therefore, waters whose qualities are higher than established water quality ~~are higher than established water quality~~ standards shall not be lowered in quality unless it has been affirmatively demonstrated to the Director that such change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, such waters. Any industrial, public or private project or development which could constitute a new source of pollution or an increased source of pollution will be required, as part of the initial project design to provide the highest and best degree of waste treatment practicable under existing

technology. In implementing the policy of this paragraph as it relates to Administrators of the Environmental Protection Agency waters under federal jurisdiction, the [Secretary of the Interior] will be kept advised and provided with such information as he will need from time to time to protect the interests of the United States and the authority of the [Secretary] Administrators in maintaining high quality of interstate waters. *should be water of U.S.*

Standards of water quality, or any modification thereof, shall become effective upon their adoption by the Director in accordance with the requirements of the Hawaii Administrative Procedure Act. Such standards shall remain in effect until amended or repealed by the Director.

Section 3. PERMITS REQUIRED

[It shall be unlawful for any person to do any one of the following without a permit issued in accordance with the provisions of this Chapter:]

- (a) To discharge any wastes into any waters of the State so as to reduce the quality of the water below the standards of water quality adopted for such waters by Chapter 37-A;
- (b) To construct, install, modify, alter, or operate any treatment works or part thereof or any extension or addition thereto;
- (c) To construct or use any new outlet for the discharge of any wastes into the waters of the State.
- (a) ^{PERMIT} ~~Authority~~ to Construct. No person shall cause or permit the construction or modification of any new or existing treatment works or waste outlet the use of which may cause the discharge of wastes or the use of which may eliminate, reduce, or control the discharge of wastes without first obtaining authorization for such construction or modification from the Director. The authorization is for construction or modification only and shall remain in effect until the Permit to Operate is granted or denied.

2. Section 3. PERMITS REQUIRED

* * *

- (c) The issuance of a Permit to Operate and/or a Permit to Construct shall not exempt any person constructing, owning or operating treatment works or waste outlets from prosecution for violations of applicable laws, rules and regulations.

(b) Permit to Operate. No person shall cause or permit the discharge of waste or the operation of any new or existing treatment works or waste outlet without first obtaining a Permit to Operate from the Director. Authorization to continue operating any new or existing treatment works or waste outlet or discharge of waste shall continue only as long as the Permit to Operate is in effect.

Violators Not Exempt

Issuance of a Permit to Operate shall not exempt any person owning or operating treatment works or waste outlet from prosecution for violations of applicable rules and regulations.

Section 4. APPLICATION FOR PERMIT

Every application for a permit shall be made on forms furnished by the Director and shall be accompanied by a statement of the proposed activity, or by a complete and detailed plan, description and history of the proposed or existing treatment works or outlet for the discharge of any wastes into the waters of the State and of any proposed additions, modifications or alterations thereto. An application for the renewal of a permit need contain only such information as is necessary to reflect changes in the permitted activity or in the treatment works or outlet which have occurred since the original filing.

All persons responsible for existing treatment works or outlets which discharge wastes into any water areas for which standards of water quality have been adopted by the Director shall file, within sixty days after the date on which a notice of adoption of the standards of water quality for such area has been published, an application for a permit to continue to discharge such wastes.⁷

^{Permit}
Application for Authority to Construct and Permit to Operate as required by Section 3 shall be made by the applicant on forms furnished by the Director and shall be accompanied by two copies of complete data, siting information, plan descriptions, specifications, drawings, and other detailed information necessary to determine in what manner the new or existing treatment works or wastes outlet will be operated and controlled.

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Each application shall be signed by the applicant and shall constitute an agreement that the applicant will assume responsibility for the construction or modification and operation of the treatment work or waste outlet in accordance with these rules and regulations.

If the applicant is a partnership or group other than a corporation, the application shall be made by one individual who is a member of the group. If the applicant is a corporation, the application shall be made by an officer of the corporation or general manager of a facility.

Section 5. ISSUANCE OF PERMIT ^{TO OPERATE} OR ~~AUTHORITY~~ TO CONSTRUCT

/Application for permits will be reviewed together with plans, descriptions and histories submitted by the person making such application and together with such additional information as may be requested by the Director to ascertain the effect or probable effect upon the standards of water quality established for the water area involved. No permit shall be issued by the Director unless the application and the supporting information clearly show that the issuance thereof is in the public interest and unless the application contains a schedule of implementing actions the applicant will follow in order to comply with such standards of water quality. No permit shall be denied unless the applicant has had an opportunity for a hearing by the Director.]

The Director may issue a permit to operate for any period not exceeding five years, /or/ and may renew a permit for any additional periods not to exceed five years. Upon expiration of the period stated herein, the permit shall automatically terminate and [no rights shall become vested in] the permittee.] shall be divested of all rights therein.

/Each permit shall set forth the conditions under which it is issued and shall require the permittee to conform to a schedule of implementing actions designed to obtain compliance with the standards of water quality established for the water area involved. The conditions shall include, but shall not be limited to, a requirement that the permittee shall do effluent sampling and shall report the results of such sampling to the Director. Any permittee may apply for a change in

the conditions of the permit. A statement of the reasons for requesting such change shall accompany the application.⁷

Conditions for Considering Applications

(a) Approval. The Director shall approve an application for ^{Permit}~~Authority~~ to Construct or Permit to Operate if the applicant can show to the satisfaction of the Director that:

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- (1) The new or existing treatment works or wastes outlet is designed, built, and equipped in accordance with the best practicable control technology so as to eliminate or reduce wastes to a minimum.
 - (2) The new or existing treatment works or wastes outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules and regulations.
 - (3) The new or existing waste source will not endanger the maintenance or attainment of applicable water quality standards.
 - (4) A schedule of implementing actions will be followed in order to comply with applicable water quality standards and established effluent limitations.

(b) Conditional Approval. Conditions of approval for ^{Permit}~~Authority~~ to Construct or Permit to Operate, may include:

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- (1) Requirement that the applicant provide such facilities as are necessary for sampling and testing to determine the quantity and quality of wastes discharged into State waters and the effects of such wastes on the receiving waters. The program for water and effluent quality monitoring including data recording shall be specified by the Director.
 - (2) Specification of conditions which will bring the operation of any new or existing wastes source described in the application within the conditions of Section 5 (a) of this ^{Regulation.}~~Rule.~~

(c) Denial. (1) In acting upon an application for ^{Permit} ~~Authority~~ to Construct or Permit to Operate, the Director may deny an application if the information submitted shows that the new or existing wastes source described in the application cannot conditionally or otherwise meet the conditions of Section 5 (a).

(2) In acting upon an application for a Permit to Operate, if the Director finds that the new or existing wastes source has been constructed or modified not in accordance with the ^{Permit} ~~Authority~~ to Construct, he shall deny the applicant the Permit to Operate.

← Action on Application

(a) The Director may request additional information from the applicant.

(b) The Director shall ^{take final action on an application} ~~set~~ within a reasonable time, but not to exceed ~~180~~ 180 days, ~~on an application~~ and shall notify the applicant in writing of his approval, conditional approval, or denial of the application.

(c) If an application is conditionally approved or denied, the Director shall set forth his reasons for conditional approval or denial in the written notice to the applicant.

(d) ^{The Administrator shall be given notice of each application (including a copy)} ~~The applicant may submit answers and comments, in duplicate, to the~~ ~~Director's response to the application.~~ ~~thereof) for a Permit.~~

(e) The Director will consider the applicant's answers and comments and shall notify the applicant in writing of his final approval ^{conditional approval} or denial of the application.

(f) If the Director issues to the applicant a conditional approval of the application, commencing work under such an authority to construct or operating under such a permit to operate shall be deemed acceptance by the applicant of all the conditions so specified.

(g) If the Director issues to the applicant a final denial of the application, the Director shall not give further consideration until a new application is submitted by the applicant.

(g) * * *

402 (b) (4)
402 (8) (1) (h) The Administrator shall be notified of every action related to the consideration of a permit application, including each permit proposed to be issued by the Director.

402 (d) (2) (i) No permit shall issue if the Administrator within 90 days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of the Act.

402 (A) (6) (j) No permit shall be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.

402 (b) (8) (k) Any permit for discharge from a publicly owned treatment works shall include conditions to require adequate notice to the Director of (A) new introductions into such works of pollutants from any source which would be a new service as defined in section 306 of the Act if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 301 of the Act if it were discharging such pollutants, (C) a substantial change in water

pollutants being introduced
into such works by a source introducing pollutants
into such works at the time of the issuance of
the permit. Such notice shall include information
on the quality and quantity of effluent to be
introduced into such treatment works and any
anticipated impact of such change in the quantity
or quality of effluent to be discharged from such
publicly owned treatment works.

402 (b) (9)

(1) No permit shall be issued to any publicly owned
treatment works unless the publicly owned treat-
ment works agrees to contractually obligate
and bind any industrial user thereof to comply
with sections 204(h), 307, and 308 of the Act.
The State shall be a third-party beneficiary
thereof with rights to directly enforce compliance
therewith.

(m) The department shall mail copies of public
notice (or upon specific request, copies of
fact sheets) for application for permits to any
federal, state, or local agency, or any affected
county, upon request, and shall provide such
agencies an opportunity to respond, comment,
or request a public hearing.

(n) At the time of issuance of public notice, the
department shall transmit the fact sheet to the
appropriate district engineer of the Army Corps
of Engineers of all applications for discharges
(other than minor discharges) into navigable
waters:

(A) The director and the district engineer for

each corps of engineers district within the State or interstate area may arrange for (i) notice to the district engineer of minor discharges, (ii) waiver by the district engineer of his right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular navigable waters or parts thereof and (iii) any procedures for the transmission of forms, period for comment by the district engineer (e.g., 30 days), and for objections of the district engineer.

(B) A copy of any written agreement between the director and a district engineer shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

4. Section 6. REVOCATION, MODIFICATION OR REVISION OF PERMIT TO OPERATE OR TO CONSTRUCT

Each permit shall be subject to revocation, to modification or to revision by the Director if he shall determine that, [such action is in the public interest.]

Section ~~1~~ ⁶ REVOCATION OF PERMIT TO OPERATE ~~OR PERMIT TO CONSTRUCT~~

Each permit shall be subject to revocation, to modification or change by the Director if he shall determine that such action is in the public interest.

- (1) There is a violation of any condition of the permit, or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts, or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
- (4) Such is in the public interest.

In taking such action the Director shall consider operation records, investigation or other information regarding the treatment works, outlets or quality of the receiving waters. Such action shall be effected by giving written notice to the permittee.

The notice shall contain the reasons for the action.

No permit shall be revoked, modified, or changed unless the permittee has had an opportunity for a hearing by the Director.

() Cancellation of ^{PERMIT} Authority to Construct

- (a) The Director may cancel an ^{PERMIT} Authority to Construct if the construction or modification is not begun within one year from the date of issuance, or if the work involved in the construction or modification is suspended for one year or more.
- (b) An applicant may request an extension of the cancellation date by writing to the Director and stating reasons for the request.

() Suspension or Revocation of Permit to Operate

Any violations of these Rules and Regulations shall be cause for the Director to suspend or revoke a Permit to Operate. Suspension or revocation of a Permit to Operate shall become final 10 days after service of notice on the holder of the permit. A Permit to Operate which has been revoked shall be surrendered forthwith to the Director and all fees paid or dues shall be forfeited.

() Transfer of Permit to Operate

A Permit to Operate shall not be transferrable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

() Reporting Discontinuance or Dismantlement

It shall be required of that person to which the Permit to Operate was issued to report to the Director within thirty days the permanent discontinuance or dismantlement of that article, machine, equipment, or other contrivance for which the Permit to Operate had been issued. The Permit to Operate shall then be surrendered forthwith to the Director.

() Posting of Permit to Operate

Upon granting an approval for a permit to operate, the Director shall issue to the applicant a certificate referred to as Permit to Operate which shall be posted in a conspicuous place at or near the article, machine, equipment or other contrivance for which the permit was issued.

() Falsifying or Altering Permit to Operate

A person shall not wilfully deface, alter, forge, counterfeit, or falsify a Permit to Operate.

Section 7. NOTICE AND PUBLIC PARTICIPATION

(a) Formulation of tentative determinations.

The Department shall formulate and prepare tentative determinations with respect to a permit in advance of public notice of the proposed issuance or denial of the permit. Such tentative determinations shall include at least the following:

- (1) A proposed determination to issue or to deny a permit for the discharge described in the application; and
- (2) If the determination proposed in paragraph (a) of this section is to issue the permit, the following additional tentative determinations;
 - (a) Proposed effluent limitations for those pollutants proposed to be limited;
 - (b) A proposed schedule of compliance, as explained in 7(c), including interim dates and requirements, for meeting the proposed effluent limitations; and
 - (c) A brief description of any other proposed special conditions which will have a significant impact upon the discharge described in the application.

(b) Public notice

- (1) Public notice of every complete application for a permit shall be circulated in a manner designed to inform interested and potentially interested persons of the discharge and of the proposed determination to issue or to deny a permit for the discharge. Public notice of public hearings shall be circulated in a manner designed to inform interested and potentially interested persons of the discharge and of the intention to hold a public hearing on the matter of a permit being issued for the discharge. Procedures for the circulation of public notice shall include at least the following:

- (a) Notice shall be circulated within the geographical area of the proposed discharge; such circulation shall include any one of the following:
 - (1) Publishing in local newspapers and periodicals, or, if the local newspaper is not a daily newspaper, in a daily newspaper of general circulation.
 - (b) Notice shall be mailed to any person or group upon request; and
 - (c) The Director shall add the name of any person or group upon request to a mailing list to receive copies of notices of all applications within the State or within a certain geographical area.
 - (d) The Director shall notify other appropriate government agencies of each complete application for a permit and of public hearings and shall provide such agencies an opportunity to submit their written views and recommendations on each complete application.
- (2) (a) Where notice is being given of an application for a permit, the Director shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views concerning the tentative determinations or request that a public hearing be held. All written comments submitted during the 30-day comment period shall be retained by the Director and considered in the formulation of his final determinations with respect to the application.
- (b) Where notice is being given of a public hearing, the Director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may prepare themselves for the hearing.

- (3) The contents of public notice shall include at least the following:
- (a) Name, address, phone number of Department issuing the public notice;
 - (b) Name and address of each applicant;
 - (c) Brief description of each applicant's activities or operations which result in the discharge described in the application (e.g., municipal waste treatment plant, steel manufacturing, drainage from mining activities);
 - (d) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;
 - (e) A statement of the Department staff's tentative determination to issue or deny a permit for the discharge described in the application;
 - (f) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph (b) of this section and any other means by which interested persons may influence or comment upon those determinations; and
 - (g) Address and phone number of premises at which interested persons may obtain further information, request a copy of the fact sheet described in 7(c) and inspect and copy all application forms and related documents.
- (4) Any public notice issued under this section may describe more than one discharge except that each discharge will be described separately.

(c) Fact sheets

Prior to issuance of public notice the Director shall prepare and, following public notice, shall send, upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets shall include at least the following information:

- (1) A sketch or detailed description of the location of the discharge described in the application;
 - (2) A quantitative description of the discharge described in the application which includes at least the following:
 - (a) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
 - (b) The average summer and winter temperatures of the discharge in degrees Fahrenheit; and
 - (c) The average daily discharge in pounds per day of any pollutants which are present in significant quantities.
 - (3) The tentative determinations required under 7(a);
 - (4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified of the water quality standards and effluent standards and limitations applied to the proposed discharge; and
 - (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
 - (a) The term of the 30-day comment period required by 7(b) and the address where comments will be received;
 - (b) Procedures for requesting a public hearing and the nature thereof; and
 - (c) Any other procedures by which the public may participate in the formulation of the final determinations.
- (d) Public access to information .
- (1) The comments of all governmental agencies on a permit application, and all information and data provided by an applicant or a permittee identifying the nature and frequency of a discharge shall be available to the public without restriction. All other information

(other than effluent data) which may be submitted by an applicant in connection with a permit application or which may be furnished by a permittee in connection with required periodic reports shall also be available to the public unless the applicant or permittee specifically identifies and is able to demonstrate to the satisfaction of the Director or his authorized representative that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.

- (2) Where the applicant or permittee is able to demonstrate to the satisfaction of the Director or his authorized representative that the disclosure of the information or a particular part (other than effluent data) thereof would result in methods or processes entitled to protection as trade secrets being divulged, the Director shall treat the information or the particular part (other than effluent data) as confidential and not release it to any unauthorized person. Such information may be divulged to other officers, employees, or authorized representatives of the State concerned with carrying out this Chapter.
- (3) Notwithstanding paragraphs (a) and (b) of this section, the Director when the State security requires, may withhold any information from the public. } 1

() Hearings and appeals

(1) Definitions

() "Party" means any affected person who files a request for a hearing meeting the requirements of paragraph () of this section and whose request is not denied.

() "Affected person" means the Environmental Protection Agency; the water pollution control agency of any State or States in which the discharge or proposed discharge shall originate, or which may be affected by such discharge; the applicant; and any foreign country, or other interested person or persons.

All hearings and appeals shall be conducted in accordance with Chapter _____, Hawaii Revised Statutes.

() Initiation of hearings. Any affected person may within 30 days of the first day of public notice of an application for a permit pursuant to Section 125.32 request the Regional Administrator to hold a public hearing to consider the issuance of a permit under this part. Upon receipt of any such request, stating with particularity any objections to the issuance of the proposed permit, and the issues of fact law, or policy which are proposed to be considered at the hearing, the Regional Administrator shall fix a time and place for the public hearing. After the filing of the initial request, any other affected person may file a request under this subsection. Regional Administrators shall deny any requests not meeting the requirements of this subsection. Such denial shall be accompanied by a brief written statement setting forth the reasons for his denial.

() Location of hearings. All proceedings conducted pursuant to this section shall be held in the State of the discharge or other appropriate area.

() Notice of hearing. Public notice of the public hearing shall be given as provided for by Section 125.32.

- (4) Presiding Officer. After granting a public hearing in accordance with paragraph () of this section the Regional Administrator shall appoint a qualified person to serve as Presiding Officer for such hearing. No official who participated in the development of proposed conditions for the permit to be considered at such hearing may serve as Presiding Officer.
- (5) Hearing file. Upon his appointment pursuant to paragraph () of this section, the Presiding Officer shall establish a hearing file. The hearing file shall include the permit application and supporting data, the staff recommendation for proposed permit conditions, the request or requests for the hearing, any data or material submitted in justification thereof, and such other material as the Presiding Officer deems relevant to the hearings. The hearing file shall be available for inspection by any person subject to the requirements of Section 125.35.
- (6) Representation. At the hearing, any party may appear on his own behalf, or may be represented by counsel or by any other authorized representative.
- (7) Prehearing conferences. In the discretion of the Presiding Officer,
- (a) In the discretion of the Presiding Officer, prehearing conferences may be held prior to any hearing or hearing on appeal held pursuant to this section. All parties will be given reasonable notice of not less than 10 days of the time and location of the conference. In the discretion of the Presiding Officer, persons other than parties may be included in attendance. At the conference, the Presiding Officer may:
- (1) Obtain stipulations, and admissions, and identify disputed issues of fact and law.
- () Mark and admit exhibits.

- () Set a hearing schedule which includes definite or tentative times for as many of the following as are deemed necessary by the Presiding Officer:
 - (a) Oral and written statements.
 - (b) Submission of written direct testimony as required by the Presiding Officer.
 - (c) Oral direct and cross-examination, if any is permitted.
 - (d) Oral argument, if any is permitted.
 - (e) Submission of proposed findings of fact.
- (b) The results of any conference shall be reduced to writing by the Presiding Officer and made part of the hearing file.
- (c) Conduct of hearings.
 - (a) Hearings shall be conducted by the Presiding Officer in an orderly but expeditious manner. Any party shall be permitted to submit oral or written statements concerning the proposed permit and to present views and recommendations thereon. In the discretion of the Presiding Officer, other persons may be allowed to present oral statements for the hearing record. All persons will be allowed to present written statements for the hearing record.
 - (b) The Presiding Officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, and for arguments of parties or their counsel or representatives.
 - (c) In view of the need for an expeditious hearing and the cross-examination provided in paragraph () () of this section, no cross-examination shall be permitted in hearings held pursuant to paragraph () of this section,

except as provided in paragraph () () of this section.

- () Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by any person from the Environmental Protection Agency.
- () All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a showing satisfactory to the Presiding Officer of their relevancy and materiality, be received in evidence and shall constitute a part of the hearing file.
- () In the discretion of the Presiding Officer exercised before the hearing begins, the hearing may be held in conformity with the requirements of paragraphs (), (), () of this section. If the hearing is held in conformity with such requirements, no request for a hearing on appeal may be filed under paragraphs () and () of this section and any issues specified in the requests for hearings shall be considered.
- () Initial decision. On the basis of the hearing file and the evidence adduced at the hearing, the Presiding Officer shall determine whether the proposed permit conditions meet the requirements of the Act. If he determines that the proposed conditions do not meet such requirements, he shall set forth such conditions as he determines are necessary to comply with the requirements of the Act, or shall determine that the permit should be denied. The decision of the Presiding Officer shall be provided to all parties and be available to the public within 20 days of the completion of the hearing. Such initial decision shall constitute the final decision of the Regional Administrator with regard

to the application for a permit unless within 10 days of the date of the Presiding Official's decision, any party files with the Regional Administrator a request for a hearing on appeal or for findings and opinion. If no such request is filed, the Regional Administrator shall issue the permit promptly with conditions established by the Presiding Officer or shall deny the permit according to the decision of the Presiding Officer.

() Availability of hearing on appeal.

() Any party requesting a hearing on appeal shall submit his request in writing to the Administrator through the Regional Administrator. Any such request shall set forth in detail the basis of the request, and shall identify any expert witnesses which are requested to testify, and any issues of fact concerning the proposed discharge with respect to which cross-examination of further testimony of witnesses, or further evidence or argument in rebuttal is necessary. The Administrator shall grant the request for a hearing on appeal if he determines:

() That the request presents material issues of fact relating to the issuance of the proposed permit; and

() That such issues require cross-examination or further evidence, testimony, or argument.

() Upon granting a request for a hearing on appeal the Administrator shall specify in writing those issues which meet the requirements of paragraphs () () () and () of this section.

() Conduct of hearing on appeal.

- () The Administrator shall designate an official of the Environmental Protection Agency to serve as Presiding Officer for the hearing on appeal. No official who participated in the initial hearing and decision under this section, or who participated in the development of proposed conditions for the permit considered at such hearing, may serve as Presiding Officer on appeal.
- () The Presiding Officer shall conduct the hearing on appeal in an orderly but expeditious manner. The parties may offer oral or written testimony, subject to the exclusion by the Presiding Officer of irrelevant, immaterial, and repetitious evidence.
- () The hearing on appeal shall be confined to those issues specified by the Administrator pursuant to paragraph () () of this section.
- () Witnesses shall be required to make oath or affirmation.
- () Witnesses may, in the discretion of the Presiding Officer, be examined or cross-examined by the Presiding Officer, the parties, or their representatives. Among the factors to be considered by the Presiding Officer in determining whether or not to allow cross-examination are:
 - () Whether witness credibility, veracity, and demeanor are relevant to a fair resolution of factual issues; and
 - () Whether, without cross-examination, parties would otherwise have an adequate opportunity to rebut opposing evidence.

To insure fair and expeditious consideration of all material issues, the Presiding Officer shall have discretion to limit the time allowed for examination and cross-examination. The Presiding Officer may exclude any testimony not relevant to the issues specified by the Administrator pursuant to paragraph () () of this section.

- () Hearings on appeal shall be reported verbatim.

Copies of transcripts of proceedings may be purchased by any person from the Environmental Protection Agency.

- () All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a showing satisfactory to the Presiding Officer of their relevancy, and materiality, be received in evidence and shall constitute a part of the hearing file.

- () Parties shall have the right to present for the record oral argument, and argument or evidence in rebuttal, within reasonable time limits set by the Presiding Officer.

- () The decision of the Presiding Officer in a hearing on appeal shall be issued according to the provisions of paragraph () of this section.

- () Official notice. In any hearing or hearing on appeal under this section, the Presiding Officer may take official notice of any general, technical or scientific fact or material within the specialized knowledge of the Environmental Protection Agency. All parties shall be notified of any fact or material so noticed, and shall be

afforded an opportunity to contest such facts or material.

- () Findings of fact and opinion. At any time prior to 10 days following the issuance of the decision of the Presiding Officer in a hearing or hearing on appeal held pursuant to this subpart, any party may request the Presiding Officer to issue findings of fact and an opinion with regard to issues raised at the hearing or hearing on appeal. The party shall specify the issues on which findings and an opinion are requested. In the discretion of the Presiding Officer, parties may be required to submit proposed findings of fact within a period of not more than 20 days. The Presiding Officer shall issue his findings of fact and opinion no later than 20 days following the receipt of a request for such findings and opinion unless he requires the submission of proposed findings of fact. Where the submission of proposed findings of fact are required of proposed findings of fact are required the Presiding Officer shall issue his findings of fact and opinion no later than 20 days following the end of the period he specified for receipt of such proposed findings. The findings of fact and opinion shall become part of the record and shall be made available to all parties participating in the hearing or hearing on appeal. In the case of a hearing under paragraph () of this section, any party may submit a request for a hearing on appeal within 10 days following the issuance of the findings and opinion.

Section 8. Fees

- (a) Filing Fee. Every applicant for an Permit to Construct and a Permit to Operate shall pay a filing fee of \$100. This filing fee shall be submitted with the application and shall not be refunded nor applied to any subsequent application following

final action of cancellation or denial of an application.

- 1) Where an application is filed for a permit to operate any new source by reason of a substantial alteration or addition and where a Permit to Operate had previously been granted for such treatment works or outlet, the applicant shall be assessed the fee of \$100.
- 2) Where an application is filed for a Permit to Operate by reason of transfer from one person to another, and no alteration addition, or transfer of location has been made, the applicant shall pay only a \$5.00 fee which shall be submitted with the application.
- 3) Where the application is filed for a Permit to Operate by reason of transfer from one location to another permanent location, and no alteration, addition, or transfer of person has been made, the applicant shall pay the \$100 filing fee which shall be submitted with the application.
- 4) A request for a duplicate Permit to Operate shall be made in writing to the Director within 10 days after the destruction, loss, or defacement of a Permit to Operate. A fee of \$1.00 shall be charged and submitted with the request.

- (b) Exemptions. Any federal, state, or county government agency shall be exempt from paying all fees as prescribed herein.

- 1) Fees shall be made payable to the State of Hawaii.

Section 9. SAMPLING AND TESTING METHODS:

- (a) All sampling and testing shall be done in accordance with "Standard Methods for the Examination of Water and Wastewater," 13th Edition and the results calculated in accordance with test procedures approved by the Department. All tests shall be made under the direction of persons knowledgeable in

the field of water pollution control.

- (b) The Department may conduct tests of waste discharges from any source. Upon request of the Department, the person responsible for the source to be tested shall provide necessary sampling stations and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge.

Section 10. MALFUNCTION OF EQUIPMENT REPORTING:

- (a) In the case of shutdown of water pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the Department at least twenty-four (24) hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:
- (1) Identification of the specific facility to be taken out of service as well as its location and permit number.
 - (2) The expected length of time that the water pollution control equipment will be out of service.
 - (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shutdown period.
 - (4) Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period.
 - (5) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.
- (b) In the event that any waste discharge, water pollution control equipment, or related facility breaks down in such a manner as to cause the discharge of water pollutants in violation of applicable rules and regulations, the person responsible for such equipment shall immediately notify the Department of such failure or breakdown and provide a statement giving

all pertinent facts, including the estimated duration of the breakdown.
The Department shall be notified when the condition causing the failure
or breakdown has been corrected and the equipment is again in operation.

Section 11. PROHIBITION OF WATER POLLUTION:

- (1) No person shall permit or cause water pollution as defined in Section 1(b)
of this part.
- (2) No permit shall be issued authorizing any of the following discharges:
 - (a) The discharge of any radiological, chemical, or biological warfare
agent or high-level radioactive waste into navigable waters;
 - (b) Any discharge which the Secretary of the Army acting through the
chief of engineers finds would substantially impair anchorage and
navigation;
 - (c) Any discharge to which the Regional Administrator^{EPA,} has objected in
writing pursuant to any right to object provided the Administrator in
section 402(d) of the^{Federal Water Pollution Control Act Amendments, 1972,} Act; and
 - (d) Any discharge from a point source which is in conflict with a plan
approved pursuant to section 5.

12
SECTION 20. VARIANCES:

- (a) Every application for a variance shall be made on forms furnished by the Department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the Department may prescribe by rules or regulations.
- (b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the Department, and the effect or probable effect upon the water quality standards established pursuant to this chapter.
- (c) Whenever an application is approved, the Department shall issue a variance authorizing the ^{discharge} ~~emission~~ in excess of applicable standards. Approval of a variance shall be made only after a public hearing is held by the Department in the county where the source is situated. No variance shall be granted by the Department unless the application and the supporting information clearly show that
- (1) The continuation of the function or operation involved in the ^{discharge} ~~emissions~~ by the granting of the variance is in the public interest;
 - (2) The discharge occurring or proposed to occur does not substantially endanger human health or safety; and
 - (3) Compliance with the rules, regulations, or standards from which variance is sought would produce serious hardships without equal or greater benefits to the public.
- (d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefore, and within the following limitation:
- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control or abatement of the ^{discharge} ~~emission~~ involved, it shall be only until the necessary means for prevention

control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the Department may prescribe. No renewal of variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the emission involved.

(2) The Director may issue a variance for a period not exceeding ten years. 31

(3) Every variance granted under this section shall include conditions requiring the grantee to perform water effluent sampling and report the results of such sampling to the Department.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding ten years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided, further, that the renewal, and the variance issued in pursuance thereof, shall provide for ^{discharge} ~~emission~~ not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application thereof. Any such application shall be made at least sixty days prior to the expiration of the variance.

(f) No variance shall be granted unless the Department finds that human health and safety will not be endangered thereby and that the attainment or maintenance of a _____ will not be prevented or interfered with.

(g) No variance granted pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

[Section 7. PENALTY

Any person who violates any provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.] 19

¹³
Section 21. PENALTIES

Any person who violates the provisions of this Chapter shall be liable for a penalty as provided in Chapter 342, Hawaii Revised Statutes.

Section 22. HEARINGS AND APPEALS

Hearings before the Director shall be held and appeals from any of its decisions for any violation of these regulations shall be made in accordance with Chapter 342, Hawaii Revised Statutes.

¹⁴
Section 23. APPLICATION

The provisions of this Chapter shall apply to the State of Hawaii, except where designated.

[Section 8. SEVERABILITY

If any provision of this Chapter, or its application to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Chapter, shall not be affected thereby.]

¹⁵
Section 24. UNCONSTITUTIONALITY CLAUSE

Should any section, paragraph, sentence, clause, phrase or application of this Chapter be declared unconstitutional or invalid for any reason by competent authority, the remainder or any other application of said Chapter shall be affected thereby.

¹⁶
Section 25. DATE OF EFFECT

This Chapter shall be effective 60 days from the date of its adoption by the Department of Health, State of Hawaii.

[NOTE: Bracketed material is to be deleted and underscored material is to be added.]